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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PRESTON JONES and SHIRIN DELALAT, on
behalf of themselves, all others similarly situated,
and the general public,

Plaintiffs,

v.

NUTIVA, INC.,

Defendant.

Case No: 4:16-cv-00711-HSG

**DECLARATION OF JACK FITZGERALD IN
SUPPORT OF MOTION FOR CLASS
CERTIFICATION**

REDACTED FOR PUBLIC FILING

Judge: Hon. Haywood S. Gilliam, Jr.

Date: October 26, 2017

Time: 2:00 p.m.

Place: Courtroom 2, 4th Floor

1 I, Jack Fitzgerald, declare as follows:

2 1. I am a member in good standing of the State Bars of California and New York; and of the
3 United States District Courts for the Northern, Central and Southern Districts of California, the Southern
4 and Eastern Districts of New York, and the Western District of Wisconsin; and of the United States Court
5 of Appeals for the Ninth Circuit. I make this declaration based on my own personal knowledge, in support
6 of plaintiffs' motion for class certification.

7 **Plaintiffs' Expert Reports**

8 2. Attached hereto as Exhibit 1 is a true and correct copy of the May 8, 2017 Expert Report of
9 Dr. Michael Greger, M.D., FACLM ("Greger Report").

10 3. Attached hereto as Exhibit 2 is a true and correct copy of the May 8, 2017 Expert Report of
11 J. Michael Dennis, Ph.D. ("Dennis Report"). The financial data found in Exhibit 2 comes from documents
12 produced by Nutiva or third parties and designated "CONFIDENTIAL" pursuant to the Protective Order.
13 Accordingly, plaintiffs are filing an unredacted copy of Exhibit 2 under seal, and publicly filing a copy of
14 Exhibit 2 with the confidential financial data redacted.

15 4. Attached hereto as Exhibit 3 is a true and correct copy of the May 8, 2017 Expert Report of
16 Colin Weir ("Weir Report"). The financial data found in Exhibit 3 comes from documents produced by
17 Nutiva or third parties and designated "CONFIDENTIAL" pursuant to the Protective Order. Accordingly,
18 plaintiffs are filing an unredacted copy of Exhibit 3 under seal, and publicly filing a copy of Exhibit 3 with
19 the confidential financial data redacted.

20 **Nutiva's Deposition Transcripts & Discovery Responses**

21 5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the transcript of the
22 March 20, 2017 deposition of Nutiva, given pursuant to Fed. R. Civ. P. 30(b)(6) by its corporate designee,
23 Nutiva's founder and Chief Executive Officer, John Roulac ("Roulac 30(b)(6) Dep. Tr.").

24 6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the transcript of the
25 July 21, 2016 deposition of Nutiva's former Senior Consultant and current member of Nutiva's Board of
26 Directors, Neil Blomquist ("Blomquist Dep. Tr.").

27 7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the transcript of the
28 July 22, 2016 deposition of Nutiva's former Marketing Manager, Liz Kaplan ("Kaplan Dep. Tr.").

8. Attached hereto as Exhibit 7 are true and correct excerpts of Nutiva's Response to Plaintiff Preston Jones' First Requests for Admission, dated May 5, 2016 and Nutiva's Response to Plaintiff Preston Jones' First Requests for Admission, date October 14, 2016.

9. Attached hereto as Exhibit 8 is a true and correct copy of Defendant Nutiva's Responses to Plaintiff's First Interrogatories, dated May 5, 2016

10. Attached hereto as Exhibit 9 is a true and correct copy of Defendant Nutiva's Third Supplemental Responses to Plaintiff's First Interrogatories, dated October 28, 2016.

Nutiva's Coconut Oil Labels

A. Summary of the Product and Challenged Labeling Claims on Each Label

11. Nutiva began selling its unrefined, semi-solid coconut oil throughout the United States in 2003. Ex. 8, Nutiva Response to Interrogatory No. 1.

12. As described in detail and evidenced below, Nutiva initially referred to the product as "Extra Virgin Coconut Oil," and sold it in plastic jars containing a predominantly yellow label and, beginning in around January 2013, in glass jars bearing a predominantly red label. In 2013, Nutiva undertook a company-wide rebranding. As a result, in late 2013, it revised its Coconut Oil's label to a predominantly white "watercolor" design label, and began referring to it simply as "Virgin Coconut Oil." Despite dropping the "Extra" descriptor, however, the product remained the same, and even the SKU did not change.

13. Notwithstanding difference in the predominant colors as between the yellow and red "Extra Virgin" labels and watercolor "Virgin" label, the claims that the Class challenges remained nearly identical throughout the class period, as demonstrated in Table 1 below.

Label (Challenged Claims)	Size(s) in Oz.	Start Date	End Date
<u>Extra Virgin (Yellow Label)</u> • "100% Less Cholesterol than Butter" • "Zero Trans Fats" • "a nutritious substitute in baking" • "'better-than-butter' replacement on bread, vegetables, or popcorn."	15, 29, 54	January 2012	July 2014
	78	June 2012	Early 2014

Label (Challenged Claims)	Size(s) in Oz.	Start Date	End Date
<u>Extra Virgin (Red/Glass Label)</u> <ul style="list-style-type: none"> • “100% Less Cholesterol than Butter • “Zero Trans Fats” • “a nutritious substitute in baking” • “‘better-than-butter’ replacement on bread, vegetables, or popcorn.” 	15, 23	January 2013	Early 2014
<u>Virgin (Watercolor Label)</u> <ul style="list-style-type: none"> • “100% Less Cholesterol than Butter • “0g Trans Fat” • “a nutritious substitute in baking” • “is ‘better than butter’ on bread, vegetables or popcorn” • “Superfood” 	15/14, 23, 29, 54	Late 2013	Currently phasing out
	78	Late 2013	September 2016

14. The above table was prepared using the labels produced by Nutiva and third parties, documents produced by Nutiva and third parties, and Nutiva’s discovery responses and deposition testimony. Based on these materials, Table 1, to the best of plaintiffs’ counsel’s knowledge, accurately and completely sets forth which challenged claims appeared on the product label, and the approximate dates during which each label, for each size jar, was in the marketplace.

B. Nutiva’s Yellow Label

15. Between January 2012 and late 2013, Nutiva sold its semi-solid coconut oil in 15, 29, 54, and 78 oz. plastic jars with a label containing a predominantly yellow background.

16. Attached hereto as Exhibit 10 is a true and correct copy of the 15 oz. “yellow” label for Nutiva’s Extra Virgin Coconut Oil, which Nutiva produced in this action bearing production number NUT5162.¹

17. Attached hereto as Exhibit 11 is a true and correct copy of the 29 oz. “yellow” label for Nutiva’s Extra Virgin Coconut Oil, which Nutiva produced in this action bearing production number NUT5163.

¹ Nutiva originally designated Exhibits 10-11, 13-15, and 19-29, which are exemplars of the product’s label, as confidential, but later withdrew the designation at plaintiffs’ request; they will thus be filed publicly.

1 18. Attached hereto as Exhibit 12 is a true and correct copy of the 54 oz. “yellow” label for
 2 Nutiva’s Extra Virgin Coconut Oil, which was produced in this action by third party Total Labels, and bears
 3 production number TOTAL47.

4 19. Attached hereto as Exhibit 13 is a true and correct copy of the 78 oz. “yellow” label for
 5 Nutiva’s Extra Virgin Coconut Oil, which Nutiva produced in this action bearing production number
 6 NUT5194.

7 20. In or around February 2013, Nutiva obtained a “Non-GMO” certification for its coconut oil,
 8 and revised the labels of the 15, 29, and 54 oz. products to reflect the certification. While making that
 9 change, Nutiva also “move[d] some things around,” such as the claim, “Zero Trans Fat.” *See* Ex. 4, Roulac
 10 30(b)(6) Dep. Tr. at 89:17-90:13.

11 21. Attached hereto as Exhibit 14 is a true and correct copy of the 15 oz. “Non-GMO” “yellow”
 12 label for Nutiva’s Extra Virgin Coconut Oil, which Nutiva produced in this action bearing production
 13 number NUT4795.

14 22. Attached hereto as Exhibit 15 is a true and correct copy of the 29 oz. “Non-GMO” “yellow”
 15 label for Nutiva’s Extra Virgin Coconut Oil, which Nutiva produced in this action bearing production
 16 number NUT4796.

17 23. Attached hereto as Exhibit 16 is a true and correct copy of the 54 oz. “Non-GMO” “yellow”
 18 label for Nutiva’s Extra Virgin Coconut Oil, which third party Total Labels produced in this action, and
 19 bears production number TOTAL41.

20 24. The 15oz yellow label prior to, and following the addition of the “Non-GMO” decal are
 21 shown below, with the challenged claims highlighted with blue markings.



25. As can be seen above, and by comparing the two versions, the substance of the challenged claims did not change when the “Non-GMO” decal was added in around February 2012. The only change affecting a challenged claim was the moving of the “Zero Trans Fats” claim from the bottom green stripe, to adjacent to the nutrition facts box.



C. Nutiva's Red Label

26. In approximately January 2013, Nutiva introduced 15 and 23 oz. glass jars of its coconut oil which used a predominately red background for the label.

27. Attached hereto as Exhibit 17 is a true and correct copy of the 15 oz. “red” label, which was produced by third party Total Labels, and bears production number TOTAL19.

28. Attached hereto as Exhibit 18 is a true and correct copy of the 23 oz. “red” label, which was produced by third party Total Labels, and bears production number TOTAL7.

29. The 15 and 23 oz. red labels are virtually identical except as to designations regarding the size of the jar and servings. An exemplar of the 15 oz. red label is shown below with the challenged claims highlighted with light green markings.



D. Nutiva's Watercolor Label

30. In late 2013, as a result of a company-wide rebranding, Nutiva adopted a new label, deemed its "watercolor" design (referring to the label's watercolor image of a halved coconut).

31. When it was first rolled out, the label bore a green triangle stating "New Look Same Product."

32. Attached hereto as Exhibit 19 is a true and correct copy of the 15 oz. glass "watercolor" label with the "New Look" decal, which was produced by Nutiva bearing production number NUT2.

33. Attached hereto as Exhibit 20 is a true and correct copy of the 15 oz. plastic "watercolor" label with the "New Look" decal, which was produced by Nutiva bearing production number NUT246.

34. Attached hereto as Exhibit 21 is a true and correct copy of the 23 oz. glass "watercolor" label with the "New Look" decal, which was produced by Nutiva bearing production number NUT1.

35. Attached hereto as Exhibit 22 is a true and correct copy of the 29 oz. plastic "watercolor" label with the "New Look" decal, which was produced by Nutiva bearing production number NUT248.

36. Attached hereto as Exhibit 23 is a true and correct copy of the 54 oz. plastic "watercolor" label with the "New Look" decal, which was produced by Nutiva bearing production number NUT7.

37. Attached hereto as Exhibit 24 is a true and correct copy of the 78 oz. plastic "watercolor" label with the "New Look" decal, which was produced by Nutiva bearing production number NUT3.

38. An exemplar of the 15 oz. watercolor label with the "New Look" decal is shown below with the challenged claims highlighted with red markings.²



² Nutiva's 15 and 23 oz. glass jar labels bear the term "culinary" above the "100 Percent Less Cholesterol than Butter" claim, and some bear a fair trade logo, but otherwise are not different than the 15 oz. and 23 oz.

39. In September 2014, Nutiva removed the “New Look” decal and added a brown “color bar.”

40. Attached hereto as Exhibit 25 is a true and correct copy of the 14 oz. glass “watercolor” label with the brown color bar, which was produced by Nutiva bearing production number NUT338.³

41. Attached hereto as Exhibit 26 is a true and correct copy of the 15 oz. plastic “watercolor” label with the brown color bar, which was produced by Nutiva bearing production number NUT247.

42. Attached hereto as Exhibit 27 is a true and correct copy of the 23 oz. glass “watercolor” label with the brown color bar, which was produced by Nutiva bearing production number NUT339.

43. Attached hereto as Exhibit 28 is a true and correct copy of the 29 oz. plastic “watercolor” label with the brown color bar, which was produced by Nutiva bearing production number NUT7564.

44. Attached hereto as Exhibit 29 is a true and correct copy of the 78 oz. plastic “watercolor” label with the brown color bar, which was produced by Nutiva bearing production number NUT340.

45. A copy of the 54 oz. label with the color bar was not apparently produced, but there is no reason to believe the updates to that label would have been any different than the labels of the other sizes.

46. An exemplar of the 15 oz. watercolor label with the brown color bar is shown below with the challenged claims highlighted with red markings.



47. As shown above, although the “nutritious substitute” and “better than butter” claims were reordered, the challenged claims remained the same in substance.

plastic jar labels. Further, because the oil used for some sizes are sourced from specific countries, the country of origin occasionally differs between sizes.

³ In January 2015, Nutiva resized its 15 oz. glass jars to 14 oz., but it did not otherwise change the product, as it retained the same UPC code and pricing.

Other Exhibits in Support of Class Certification

48. Attached hereto as Exhibit 30 is a true and correct copy of a study Nutiva commissioned, entitled “Nutiva A & U and Brand Exploratory,” and produced in this action by third party BuzzBack, and bears production numbers BUZZBACK73-161. Exhibit 30 was marked as Exhibit 87 to the Rule 30(b)(6) deposition of John Roulac.

49. Attached hereto as Exhibit 31 is a true and correct copy of an email exchange between Nutiva’s former marketing director, Liz Kaplan, and Natural Foods, a company for whom Nutiva manufactured coconut oil as a private label manufacturer. Exhibit 31 was produced by Nutiva in this action, bearing production numbers NUT204-207. Because Nutiva designated the document “Confidential” under the Protective Order, plaintiffs are moving to file Exhibit 31 under seal.

50. Attached hereto as Exhibit 32 is a true and correct copy of a document produced by Nutiva bearing production number NUT760-63.

51. Attached hereto as Exhibit 33 is a true and correct copy of a 4-page document showing “Nutiva Gross Sales by Month Since 2012,” which is a summary document that was created from a native Microsoft Excel spreadsheet produced by Nutiva on March 9, 2017. Exhibit 33 was marked as Exhibit 61 to the Roulac 30(b)(6) deposition (*see also* Roulac 30(b)(6) Dep. Tr. at 190:12-191:12 for discussion of exhibit). Because Exhibit 33 reflects sales information that Nutiva designated as “Confidential” under the Protective Order when it produced the information on which this summary document is based, plaintiffs are moving to file it under seal.

52. With respect to Roulac Deposition Exhibit 61, the Nutiva Extra Virgin and Virgin products for which plaintiffs seek certification are reflected by item numbers that begin with a “COC” prefix. Items beginning with an “REF” prefix reflect Nutiva’s Refined product, for which plaintiffs are not currently seeking certification.

53. When tallied, Roulac Deposition Exhibit 61 reflects Nutiva’s sales of [REDACTED] units of Extra Virgin and Virgin Coconut Oil bearing the challenged claims through February 2017, for wholesale sales of \$ [REDACTED].

1 54. Based on this information and transactional sales data obtained from third party retailers, as
2 well as data from SPINS, plaintiffs' damages expert, Colin Weir, has estimated retail sales of approximately
3 \$167,191,188. *See* Ex. 3, Weir Report at 16 ¶ 60, Table 2.

4 55. Before producing the information on which Roulac Deposition Exhibit 61 is based, Nutiva
5 produced similar information, through September 2016. The production of that information also included
6 Nutiva's costs. I have tallied Nutiva's sales and costs based on this spreadsheet, for the same "COC" class
7 products reflected in Roulac Deposition Exhibit 61. That shows \$ [REDACTED] in sales, and \$ [REDACTED] in
8 costs, or a profit of \$ [REDACTED]. Projecting this profit margin to Nutiva's \$ [REDACTED] of sales through
9 February 2017, Nutiva has realized a profit of \$ [REDACTED] on the "COC" class products.

10 56. Attached hereto as Exhibit 34 is a true and correct copy of a document produced in this action
11 by third party United Natural Foods, Inc., bearing production number UNFI8. Exhibit 34 was marked as
12 Exhibit 18 to the Rule 30(b)(6) deposition of John Roulac.

13 57. Attached hereto as Exhibit 35 is a true and correct copy of a document produced by Nutiva
14 bearing production number NUT6051. Exhibit 35 was marked as Exhibit 22 to the Rule 30(b)(6) deposition
15 of John Roulac.

16 58. Attached hereto as Exhibit 36 is a true and correct copy of a document produced by Nutiva
17 bearing product number NUT225.

18 59. Attached hereto as Exhibit 37 is a true and correct copy of a document produced by Nutiva
19 bearing product number NUT7565. Because Nutiva designated the document "Confidential" under the
20 Protective Order, plaintiffs are moving to file Exhibit 37 under seal.

21 60. Attached hereto as Exhibit 38 is a true and correct copy of a document produced in this action
22 by third party KeHe Distributors, bearing production number KEHE702. Exhibit 38 was marked as Exhibit
23 90 to the Rule 30(b)(6) deposition of John Roulac. Because KeHe designated the document "Confidential"
24 under the Protective Order, plaintiffs are moving to file Exhibit 38 under seal.

25 61. Attached hereto as Exhibit 39 is a true and correct copy of a document produced by Nutiva
26 bearing production numbers NUT490-91.

62. Attached hereto as Exhibit 40 is a true and correct copy of a document produced by third party KeHe Distributors, bearing production number KEHE436. Because KeHe designated the document “Confidential” under the Protective Order, plaintiffs are moving to file Exhibit 40 under seal.

63. Attached hereto as Exhibit 41 is a true and correct copy of a document produced by third party BuzzBack, bearing production number BUZZBACK5-45. Exhibit 41 was marked as Exhibit 86 to the Rule 30(b)(6) deposition of John Roulac.

64. Attached hereto as Exhibit 42 is a true and correct copy of excerpts from a Nutiva PowerPoint presentation, comprising two slides titled “Nutiva Saturated Fats,” and “Coconut Oil for Health.” Exhibit 42 was marked as Exhibit 92 to the Rule 30(b)(6) deposition of John Roulac. These slides were excerpted from the original PowerPoint presentation because, in the native PowerPoint file that Nutiva produced, the content was cut off. A true and correct copy of the original PowerPoint document, produced by Nutiva and bearing production numbers NUT6101-117, is attached hereto as Exhibit 43.

65. Attached hereto as Exhibit 44 is a true and correct copy of a printout of an August 15, 2012 internet archive capture of Nutiva’s Website, and specifically a subpage titled “Coconut Myths & Coconut Nutrition.” I obtained Exhibit 44 on July 17, 2016, by accessing the page through the Internet Archive, www.archive.org, which maintains “captures” of websites over time, and converting the page to a PDF document.

66. Attached hereto as Exhibit 45 is a true and correct copy of a document produced by Nutiva bearing production numbers NUT117-55. Exhibit 45 was marked as Exhibit 8 to the deposition of Liz Kaplan. Because Nutiva designated the document “Confidential” under the Protective Order, plaintiffs are moving to file Exhibit 45 under seal.

67. Attached hereto as Exhibit 46 is a true and correct copy of a document produced by Nutiva bearing production numbers NUT7096-7143. Because Nutiva designated the document “Confidential” under the Protective Order, plaintiffs are moving to file Exhibit 46 under seal.

68. Attached hereto as Exhibit 47 is a true and correct copy of a document produced by Nutiva bearing production numbers NUT387-88. Exhibit 47 was marked as Exhibit 3 to the Rule 30(b)(6) deposition of John Roulac.

69. Attached hereto as Exhibit 48 is a true and correct copy of a document produced by Nutiva bearing production numbers NUT575-576. Exhibit 48 was marked as Exhibit 5 to the Rule 30(b)(6) deposition of John Roulac.

70. Attached hereto as Exhibit 49 is a true and correct copy of a document produced by Nutiva bearing production number NUT386.

71. Attached hereto as Exhibit 50 is a true and correct copy of a document produced by Nutiva bearing production number NUT868.

72. Attached hereto as Exhibit 51 is a true and correct copy of a document produced by Nutiva bearing production number NUT888.

73. Attached hereto as Exhibit 52 is a true and correct copy of a document produced by Nutiva bearing production number NUT515. Exhibit 52 was marked as Exhibit 92 to the deposition of Liz Kaplan.

74. Attached hereto as Exhibit 53 is a true and correct copy of a document produced by Nutiva bearing production number NUT587. Exhibit 53 was marked as Exhibit 94 to the deposition of Liz Kaplan.

75. Attached hereto as Exhibit 54 is a true and correct copy of a document produced by Nutiva bearing production number NUT422.

76. Attached hereto as Exhibit 55 is a true and correct copy of a document produced by Nutiva bearing production number NUT460-61.

77. Attached hereto as Exhibit 56 is a true and correct copy of a document produced by Nutiva bearing production number NUT479-80.

78. Attached hereto as Exhibit 57 is a true and correct copy of a document produced by Nutiva bearing production number NUT481.

79. Attached hereto as Exhibit 58 is a true and correct copy of a document produced by Nutiva bearing production number NUT482.

80. Attached hereto as Exhibit 59 is a true and correct copy of a document produced by Nutiva bearing production number NUT555.

81. Attached hereto as Exhibit 60 is a true and correct copy of a document produced by Nutiva bearing production number NUT556.

1 82. Attached hereto as Exhibit 61 is a true and correct copy of a document produced by Nutiva
2 bearing production number NUT561.

3 83. Attached hereto as Exhibit 62 is a true and correct copy of a document produced by Nutiva
4 bearing production numbers NUT564-65.

5 84. Attached hereto as Exhibit 63 is a true and correct copy of a document produced by Nutiva
6 bearing production numbers NUT790-91.

7 85. Attached hereto as Exhibit 64 is a true and correct copy of a document produced by Nutiva
8 bearing production number NUT1040.

9 86. Attached hereto as Exhibit 65 is a true and correct copy of a two-page document produced
10 by Nutiva, bearing production numbers NUT6071-72. Exhibit 65 was marked as Exhibit 65 to the Rule
11 30(b)(6) deposition of John Roulac.

12 87. Attached hereto as Exhibit 66 is a true and correct copy of a document produced by Nutiva,
13 bearing production numbers NUT6924-48. Exhibit 66 was marked as Exhibit 67 to the Rule 30(b)(6)
14 deposition of John Roulac. Because Nutiva designated the document as “Confidential” under the Protective
15 Order, plaintiffs are moving to file Exhibit 66 under seal.

16 88. Attached hereto as Exhibit 67 is a true and correct copy of a document produced by Nutiva,
17 bearing production numbers NUT6865-89. Exhibit 67 was marked as Exhibit 68 to the Rule 30(b)(6)
18 deposition of John Roulac. Because Nutiva designated the document as “Confidential” under the Protective
19 Order, plaintiffs are moving to file Exhibit 67 under seal.

20 89. Attached hereto as Exhibit 68 is a true and correct copy of a document produced by Nutiva
21 bearing production numbers NUT6411-42. Exhibit 68 was marked as Exhibit 93 to the Rule 30(b)(6)
22 deposition of John Roulac. Because Nutiva designated the document as “Confidential” under the Protective
23 Order, plaintiffs are moving to file Exhibit 68 under seal.

24 90. Attached hereto as Exhibit 69 is a true and correct copy of a document Nutiva produced
25 bearing production number NUT7009.

26 91. Attached hereto as Exhibit 70 is a true and correct copy of a document produced by third
27 party Costco Wholesale Corporation, bearing production numbers COSTCO1-2. Because Costco designated
28 the document “Confidential” under the Protective Order, plaintiffs are moving to file Exhibit 70 under seal.

92. Attached hereto as Exhibit 71 is a true and correct copy of a document produced by Nutiva, bearing production number NUT454.

93. Attached hereto as Exhibit 72 are true and correct copies of photos of Louana Coconut Oil, a brand discussed in the email attached hereto as Exhibit 71 (NUT454), which were produced by plaintiffs in this action, bearing production numbers PLTF4126-28.

The Adequacy of the Law Office of Jack Fitzgerald, PC to Act as Class Counsel

94. The Law Office of Jack Fitzgerald, PC (“LOJF”) was formed in April 2013 and dedicates its practice almost entirely to prosecuting class action lawsuits. Mr. Fitzgerald is an accomplished class action attorney who has been appointed class counsel in numerous cases and helped victimized consumers recover millions of dollars. The firm’s resume is attached hereto as Exhibit 73, providing biographies of each of its attorneys.

95. Although primarily involved in prosecuting class actions, LOJF is involved in other high-level representations demonstrating the firm’s reputation for providing excellent work and representation. For example, the firm is currently or recently:

- Represented fitness celebrity and star of NBC’s hit show, *The Biggest Loser*, Jillian Michaels, in a malpractice action against her former counsel, Greenberg Traurig, pending in the Superior Court of the State of California, Los Angeles County, styles *Michaels et al. v. Greenberg Traurig, LLP et al.*, No. SC126100.
- Representing the defendant and counter-claim plaintiff in a declaratory judgment and Lanham Act action involving the false advertising and passing off of America’s best-selling weight loss supplement, Lipozene. *See, e.g. Obesity Research Institute, LLC v. Fiber Research Int’l, LLC*, 165 F. Supp. 3d 937 (S.D. Cal. 2016).
- Represented the defendant in a putative class action alleging the false advertising of dietary supplements pending in this District Court, styled *Martin v. SanMedica Int’l, LLC et al.*, No. 2:16-cv-07794-ODW (JPRx) (C.D. Cal.) (voluntarily dismissed).
- Representing a corporation and its shareholders in a derivative suit seeking the return of assets after certain officers and directors deflated revenue then engaged in an assignment of assets to fraudulently avoid distributing profits to the shareholders. The action is pending in the Superior

1 Court of the State of California, San Diego County, and is styled *Young et al. v. Harmon et al.*, No.
2 37-2015-00027723-CU-NP-CTL.

3 96. LOJF has no conflicts with the Class and has been and will continue to vigorously prosecute
4 this action on behalf of the Class.

5
6 I declare under penalty of perjury of the United States that the foregoing is true and correct to the
7 best of my knowledge.

8 Executed this 14th day of August, 2017, in San Diego, California.

9 By: /s/ Jack Fitzgerald
10 Jack Fitzgerald
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